

THE CO-OPERATIVE SOCIETIES (AMENDMENT) ACT, 2004

No. 2 of 2004

Date of Assent: 9th July, 2004

Date of Commencement: By Notice

An Act of Parliament to amend the Co-operative Societies Act, 1997

ENACTED by the Parliament of Kenya, as follows :-

1. This Act may be cited as the Co-operative Societies (Amendment) Act, 2004 and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint and different dates may be appointed for different provisions.

Short title and commencement.

2. Section 2 of the Co-operative Societies Act, 1997 (in this Act referred to as "the principal Act") is amended -

Amendment of section 2 of No. 12 of 1997.

(a) by deleting the definitions of "apex society", "Commissioner" and "date of dissolution" and substituting therefor the following new definitions -

"apex society" means a society formed at the national level by the co-operative movement in Kenya and registered under this Act to promote co-operative development and represent the interests of co-operative societies locally and internationally;

"Commissioner" means the Commissioner for Co-operative Development appointed under section 3 and includes any

person on whom any of the powers of the Commissioner have been conferred in accordance with this Act;

“date of dissolution” means the date on which the Commissioner’s order cancelling the registration of a co-operative society takes effect;

- (b) by deleting the definitions of “district co-operative union”, “Registrar” and “secondary society”;
- (c) by inserting the following new definitions in their proper alphabetical sequence -

“capital” means the permanent members equity in the form of common stock and includes all disclosed reserves, retained earnings, grants or donations;

“deposit” means a sum of money paid on terms under which it shall be repaid, with or without interest or premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the society to receive it at the risk of the society receiving it;

“share” means the amount represented by a member’s portion in the equity of a society as a co-owner;

“special resolution” means a resolution passed by two thirds of the members present and voting at a general meeting of a society;

“supervisory committee” means an oversight committee elected at a general meeting.

3. The principal Act is amended by repealing section 3 and replacing it with the following new section - Replacement of section 3 of No. 12 of 1997.

Commissioner and other officers.

3.(1) There shall be a Commissioner for Co-operative Development whose office shall be an office in the public service.

(2) There shall be such number of officers, including deputy Commissioners, as may be necessary to assist the Commissioner in the administration of the provisions of this Act.

(3) The Commissioner shall be responsible for the growth and development of co-operative societies by providing such services as may be required by co-operative societies for their organization, registration, operation, advancement and, dissolution and for administration of the provisions of this Act.

4. Section 5 of the principal Act is amended - Amendment of section 5 of No. 12 of 1997.
- (a) by deleting paragraph (b) and substituting therefor the following new paragraph -
- (b) in the case of a co-operative union has at least two registered societies as its members;
- (b) by deleting paragraph (c).

Amendment of
section 7 of No.
12 of 1997.

5. Section 7 of the principal Act is amended in subsection (6) by deleting the words “five thousand” and “five hundred” and substituting therefor the words “ten thousand” and “one thousand” respectively.

Amendment of
section 8 of No.
12 of 1997.

6. Section 8 of the principal Act is amended by inserting the following new subsection immediately after subsection (3) –

(3A). The Commissioner may, if he is satisfied that an amendment under this section was effected pursuant to a misrepresentation or concealment of a material fact by the person applying for registration, cancel the amendment.

Amendment of
section 9 of No.
12 of 1997.

7. Section 9 of the principal Act is amended –

- (a) by adding the words “within thirty days of being notified of the refusal” at the end of subsection (1);
- (b) by deleting subsection (2) and substituting therefor the following new subsection –

(2) Any party aggrieved by the decision of the Minister under subsection (1) may appeal against the decision to the High Court within thirty days.

Amendment of
section 11 of No.
12 of 1997.

8. Section 11 of the principal Act is amended by deleting subsection (3).

9. Section 16 of the principal Act is amended by deleting the words “an annual” and substituting therefor the word “a”. Amendment of section 16 of No. 16 of 1997.

10. Section 21 of the principal Act is amended by deleting— Amendment of section 21 of No. 12 of 1997.

(a) The expression “annual, general and special” appearing in paragraph (a) and substituting therefor the word “general”;

(b) the expression “annual accounts and inventories” appearing in paragraph (d) and substituting therefor the expression “annual accounts, inventories and”.

11. The principal Act is amended by inserting the following new section immediately after section 24 – Insertion of section 24A. in No. 12 of 1997.

Estimates of income and expenditure.

24A. For each financial year, the Committee of a co-operative society shall cause to be prepared estimates of the society’s income and expenditure including recurrent and capital estimates for approval by the general meeting at least three months before the end of the preceding financial year.

12. The principal Act is amended by repealing section 25 and replacing it with the following new section - Replacement of section 25 of No. 12 of 1997.

Account and audit.

25.(1) Every co-operative society shall keep proper accounts which shall -

(a) be prepared in accordance with International Accounting Standards;

- (b) reflect the true and fair state of the co-operative society's affairs; and
- (c) explain the co-operative society's transactions including -
 - (i) all sums of money received and paid by the co-operative society and the reasons thereto;
 - (ii) all sales and purchases of goods and services by the co-operative society; and
 - (iii) all assets and liabilities of the co-operative society.

(2) The books of accounts shall be kept at the registered office of the co-operative society or at such other place as may be determined by the co-operative society and shall at all times be available for inspection by members of its supervisory committee and the auditor.

(3) It shall be the duty of every co-operative society to cause its accounts to be audited at least once in every financial year by an auditor appointed under subsection (4).

(4) The auditor shall be appointed

at the annual general meeting from a list of auditors approved by the Commissioner, in consultation with the Institute of Certified Public Accountants of Kenya.

(5) Where at an annual general meeting no auditor is appointed, the Commissioner may appoint a person to fill the vacancy and the remuneration of the person so appointed shall be borne by the co-operative society.

(6) The accounts referred to in subsection (3) shall -

(a) conform with International Financial Reporting Standards;

(b) include the following records-

(i) a balance sheet;

(ii) an income and expenditure account; and

(iii) a cash flow statement;

(c) be approved by the Committee; and

(d) be authenticated by at least three Committee members including the chairman of the co-operative society.

(7) No auditor shall present the audited accounts of a co-operative society to the

members at a general meeting unless the accounts have previously been submitted to the Commissioner in such form as may be prescribed.

(8) The auditor shall submit the audited accounts to a general meeting within four months after the end of the accounting period and shall include his opinion as to whether or not the co-operative society's business has been conducted-

- (a) in accordance with the provisions of this Act and, whether the books of accounts kept by the co-operative society are in agreement therewith and give a true and fair view of the state of the affairs of the society; and
- (b) in accordance with the co-operative society's objectives, by-laws and any other resolutions made by the society at a general meeting.

(9) The auditor shall have the right to –

- (a) attend any general meeting of the co-operative society and be heard on any matter which concerns him as an auditor;
- (b) receive all notices and other communications relating to any general meeting which a

member of the co-operative society is entitled to receive;

- (c) access, at all times, any accounting records, books or documents of the co-operative society as may be necessary for the purpose of carrying out his duties as an auditor and may at the time of his audit –
- (i) summon any officer, agent or member of the co-operative society for the purpose of obtaining information on the transactions of the co-operative society or management of its affairs;
 - (ii) require the production of any book, document, cash or securities relating or belonging to the co-operative society by any officer, agent, trustee or member having custody of such book, document, cash or securities;
 - (iii) demand such other information or explanation from any officer of the co-operative society as may be necessary for the

performance of his duties
as an auditor.

(10) Every co-operative society shall, at such time and in such form as may be prescribed, file with the Commissioner an annual return together with a certified true copy of the audited accounts and balance sheet of the society for each period of twelve months.

(11) Where a co-operative society fails to cause its accounts to be audited within the prescribed period in respect of its business for the previous financial year, members of the Committee shall automatically lose their positions at the next general meeting and shall not be eligible for re-election for three years unless the Commissioner is satisfied that the failure was due to circumstances beyond their control.

(12) For the purposes of this section, “International Accounting Standards” and “International Financial Reporting Standards” means the standards established by the Institute of Certified Public Accountants of Kenya.

Replacement of
section 27 of No.
12 of 1997.

13. The principal Act is amended by repealing section 27 and replacing it with the following new section

General
meetings.

27.(1) The supreme authority of a co-operative society shall be vested in the general meeting at which members shall have the right to attend, participate and vote on all matters.

(2) Subject to subsection (3) a co-operative society shall hold an annual general meeting within four months after the end of each financial year.

(3) In the first year after registration of a co-operative society, the general meeting shall be held not later than one month after receipt of the certificate of registration of the co-operative society and during such meeting, the members shall -

- (a) elect the co-operative society's office bearers for the ensuing year;
 - (b) determine the maximum borrowing powers of the co-operative society;
 - (c) consider and approve estimates of income and expenditure for the ensuing financial year or part thereof;
 - (d) appoint the co-operative society's bankers and auditors; and
 - (e) receive reports and decide upon such other matters as may be necessary for the conduct of the co-operative society's business.
- (4) A general meeting of a co-

operative society shall be convened by giving at least fifteen days written notice to the members.

(5) At the annual general meeting of a co-operative society, the members shall -

- (a) consider and confirm the minutes of the last general meeting;
- (b) consider any reports of the Committee or the Commissioner;
- (c) consider and adopt audited accounts;
- (d) determine the manner in which any available surplus is to be distributed or invested;
- (e) elect the co-operative society's office bearers for the ensuing year;
- (f) determine, where necessary, the maximum borrowing power of the society;
- (g) appoint an auditor for the ensuing year; and
- (h) transact any other general business of the co-operative society of which notice has been

given to members in the manner prescribed in the by-laws of the co-operative society.

(6) A special general meeting of a co-operative society may be convened -

(a) by the Committee for the purpose of approving annual estimates or discussing any urgent matter which in the Committee's opinion is in the interest of the co-operative society; or

(b) on receipt of a written notice for such meeting signed by such number of the members of the co-operative society as may be prescribed in the rules and stating the objects and reasons for calling the meeting.

(7) If the Committee fails to convene a meeting within fifteen days of receiving the notice under subsection (6)(b), the members demanding the meeting may themselves convene the meeting by giving notice to the other members of the co-operative society, stating the objects and reasons for the meeting and the fact that the Committee has failed to convene the meeting.

(8) The Commissioner may convene a special general meeting of a society at which he may direct the matters to be discussed at the meeting.

(9) The chairman or in his absence the vice-chairman or such other person as may be prescribed in the by-laws of the co-operative society shall preside at a general meeting of a co-operative society.

(10) The Commissioner may preside at any meeting convened under subsection (8).

Replacement of
section 28 of No.
12 of 1997.

14. The principal Act is amended by repealing section 28 and replacing it with the following new section

Membership
and powers
of the
Committee.

28.(1) Every co-operative society shall have a Committee consisting of not less than five and not more than nine members.

(2) The members of the Committee shall elect a chairman and a vice chairman from among their number.

(3) The Committee shall be the governing body of the society and shall, subject to any direction from a general meeting or the by-laws of the co-operative society, direct the affairs of the co-operative society with powers to-

- (a) enter into contracts;
- (b) institute and defend suits and other legal proceedings brought in the name of or against the co-operative society; and

- (c) do all other things necessary to achieve the objects of the co-operative society in accordance with its by-laws.

- (4) No person shall be a member of a Committee if he-
 - (a) is not a member of the co-operative society;
 - (b) is under eighteen years of age;
 - (c) is unable to read and write;
 - (d) receives any remuneration, salary or other payment from the co-operative society save in accordance with this Act;
 - (e) is a committee member in two other co-operative societies;
 - (f) being a member of a co-operative society that lends money to its members, lends money on his own account;
 - (g) being a member of a co-operative society which trades in goods or produce, trades either on his own account or some other person's account in the same type of goods or produce;

- (h) has not, within thirty days of being appointed, declared his wealth to the Commissioner in the prescribed manner;
- (i) is an undischarged bankrupt;
- (j) is of unsound mind;
- (k) has been adversely named by the Commissioner in an inquiry report adopted by a general meeting for mismanagement or corrupt practices while a member of the Committee;
- (l) has been convicted of any offence involving dishonesty or is sentenced to imprisonment for a term exceeding three months;
- (m) has been convicted of any offence under this Act or rules made thereunder;
- (n) has any uncleared debt owing to a co-operative society at the end of its financial year other than in respect of a loan under the provision of any rules made under this Act;
- (o) is a person against whom any amount of money is due under a

decree, decision or order or is pending recovery under this Act.

(5) The Committee may delegate any of its duties under this Act to an officer or officers of the co-operative society but, nothing in this subsection shall absolve the Committee from its responsibility to run the affairs of the co-operative society in a proper and businesslike manner.

(6) In the conduct of the affairs of a co-operative society the Committee shall exercise the prudence and diligence of ordinary men of business and the members shall be held, jointly and severally liable for any losses sustained through any of their acts which are contrary to the Act, rules, by-laws or the directions of any general meeting of the co-operative society.

(7) The Commissioner may suspend from duty any Committee member charged in a court of law with an offence involving fraud or dishonesty pending the determination of the matter.

15. Section 29 of the principal Act is amended by deleting the word “Tribunal” appearing in subsection (10) and substituting therefor the word “Minister”.

Amendment of section 29 of No. 12 of 1997.

16. Section 30 of the principal Act is amended by deleting subsection (10) and substituting therefor the following new subsection—

Amendment of section 30 of No. 12 of 1997.

(10) Where the Commissioner refuses to approve the division of an existing society under sub-section (9), the society may appeal to the Minister within thirty days of the communication to it of the refusal.

Amendment of
section 32 of No.
12 of 1997.

17. Section 32 of the principal Act is amended in subsection (1) by deleting the word “five” and substituting therefor the word “twenty”.

Replacement of
section 35 of No.
12 of 1997.

18. The principal Act is amended by repealing section 35 and replacing it with the following new section

Failure to
remit the
sum
deducted.

35. (1) Where an employer of a person who is a member of a co-operative society has, under the instructions of the employee, made a deduction from the employee’s emoluments for remittance to the co-operative society concerned but fails to remit the deductions within seven days after the date upon which the deduction was made, the employer shall be liable to pay the sum deducted together with compound interest thereon at a rate of not less than five percent per month.

(2) The Commissioner may, on behalf of the society, institute legal proceedings in court for recovery of the sum owing under subsection (1) without prejudice to any other mode of recovery and such sum shall be a civil debt recoverable summarily.

(3) The Commissioner may, by

written notice, appoint any person, bank or institution to be an agent of the society for the purposes of collection and recovery of a debt owed to the society.

(4) The agent shall pay the amount specified in the notice issued under subsection (3) out of any moneys which may, at any time during the twelve months following the date of the notice, be held by him for the employer or are due from him to the employer.

(5) Where an agent claims to be or to have become unable to comply with subsection (3) by reason of lack of moneys held by or due from him, he shall give a written notification to the Commissioner stating the reasons for his inability and the Commissioner may-

- (a) accept the notification and cancel or amend the notice accordingly; or
- (b) if he is not satisfied with the reasons, reject the notification in writing.

(6) Where an agent fails to notify the Commissioner or the notification is rejected, it shall be presumed that the agent has sufficient moneys for the payment of the amount specified in the notice.

(7) Where an agent fails to pay the

amount specified in the notice within thirty days from the date of service or the date on which any moneys come into his hands for or become due to him from the employer, the agent shall be liable for the amount specified in the notification as if he were the employer.

(8) In any proceedings for the collection or recovery of the amount specified in the notice, it shall not be a defence for the agent to claim lack of the moneys.

(9) This section shall apply notwithstanding that the failure under subsection (1), to remit the sum deducted may constitute an offence under some other law for which the employer has been prosecuted, or is being, or is likely to be prosecuted.

(10) In this section “employer” includes any person, firm or organization holding remuneration or payment for produce of a member of a co-operative society and the term “employee” includes any person who receives remuneration or payment for produce from such persons or firm or organization.

Amendment of
section 43 of No.
12 of 1997.

19. Section 43 of the principal Act is amended by deleting the word “annual”.

Amendment of
section 45 of No.
12 of 1997.

20. Section 45 of the principal Act is amended in paragraph (e) by deleting the words “an annual” and substituting therefor the word “a”.

Amendment of
section 47 of No.
12 of 1997.

21. Section 47 of the principal Act is amended by inserting the following new subsections immediately after subsection (2) –

(3) The reserve fund shall be invested in the manner provided for under section 45 of this Act.

(4) The reserve fund set up under this section shall be indivisible and no member shall be entitled to claim a specific share of it.

(5) Upon the dissolution of a co-operative society, the assets under the reserve fund shall be applied in the discharge of the liabilities of the society.

22. Section 49 of the principal Act is amended by deleting the words “approval by the annual general meeting” and substituting therefor the words “a special resolution by the general meeting.”

Amendment of
section 49 of No.
12 of 1997.

23. Section 51 of the principal Act is amended by deleting subsection (2) and substituting therefor the following new subsection –

Amendment of
section 51 of No.
12 of 1997.

(2) If any co-operative society fails to send to the Commissioner for registration the particulars of any charge created by it within a period of thirty days, then unless the registration has been effected by some other person within that period, every officer of the society shall be guilty of an offence and shall be liable to a fine not exceeding two thousand shillings for every day during which the default continues.

24. Section 54 of the principal Act is amended in subsection (3) by deleting the word “hundred” and substituting therefor the word “thousand”.

Amendment of
section 54 of No.
12 of 1997.

Amendment of
section 56 of No.
12 of 1997.

25. Section 56 of the principal Act is amended in subsection (2) by deleting the word “two” and substituting therefor the word “ten”.

Amendment of
section 57 of No.
12 of 1997.

26. Section 57 of the principal Act is amended in subsection (2) by deleting the word “twenty” and substituting therefor the words “two thousand”.

Amendment of
section 58 of No.
12 of 1997.

27. Section 58 of the principal Act is amended –

(a) by deleting subsection (3) and substituting therefor the following new subsection –

(3) The Commissioner shall report the findings of his inquiry at a general meeting of the society and shall give directions for the implementation of the recommendations of the inquiry report.

(b) inserting the following new subsections immediately after subsection (3) –

(4) Where the Commissioner is satisfied, after due inquiry, that the Committee of a co-operative society is not performing its duties properly, he may -

(a) dissolve the Committee; and

(b) cause to be appointed an interim Committee consisting of not more than five members from among the members of the society for a period not exceeding ninety days.

(5) A person who contravenes subsection (2) shall be guilty of an offence and shall be liable to a fine not exceeding two thousand shillings for each day during which the offence continues.

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28. The principal Act is amended by inserting a new section immediately after section 60 as follows –

Insertion of section 60A of No.12 of 1997.

Routine inspection.

60A. Notwithstanding the provisions of sections 58 and 59, the Commissioner may from time to time carry out impromptu inspection into the affairs of a co-operative society.

29. Section 61 of the principal Act is amended –

Amendment of section 61 of No. 12 of 1997.

- (a) in subsection (2), by deleting the word “Tribunal” and substituting therefor the word “High Court” ; and
- (b) in subsection (3), by deleting the word “Tribunal” and substituting therefor the word “High Court.”

30. The principal Act is amended by repealing section 62 and replacing it with the following new section –

Replacement of section 62 of No. 12 of 1997.

Cancellation of registration.

62.(1) Where a co-operative society has –

- (a) less than the prescribed number of members; or
- (b) failed to file returns with the Commissioner for a period of three years; or
- (c) failed to achieve its objects,

the Commissioner may, in writing, order the

cancellation of its registration and dissolution of the society and the order shall take effect immediately.

(2) A person aggrieved by an order of the Commissioner under subsection (1) may appeal against such order to the Minister within thirty days of the order.

Amendment of section 69 of No. 12 of 1997.

31. Section 69 of the principal Act is amended in subsections (1) and (2) by deleting the word “fourteen” wherever it occurs and substituting therefor the word “thirty”

Replacement of section 73 of No. 12 of 1997.

32. The principal Act is amended by repealing section 73 and replacing it with the following new section –

Replacement of section 73 of No. 12 of 1997.

73. (1) Where it appears that any person who has taken part in the organization or management of a co-operative society, or any past or present officer or member of the society

- (a) has misapplied or retained or become liable or accountable for any money or property of the society; or
- (b) has been guilty of misfeasance or breach of trust in relation to the society,

the Commissioner may, on his own accord or on the application of the liquidator or of any creditor or member, inquire into the conduct of such person.

(2) Upon inquiry under subsection (1), the Commissioner may, if he considers it appropriate, make an order requiring the person to repay or restore the money or property or any part thereof to the co-operative society together with interest at such rate as the Commissioner thinks just or to contribute such sum to the assets of the society by way of compensation as the Commissioner deems just.

(3) This section shall apply notwithstanding that the act or default by reason of which the order is made may constitute an offence under another law for which the person has been prosecuted, or is being or is likely to be prosecuted.

33. The principal Act is amended by repealing section 74 and replacing it with the following new section – Replacement of section 74 of No. 12 of 1997.

Appeal
against
order.

74.(1) Any person aggrieved by an order of the Commissioner under section 73(1) may, within thirty days, appeal to the Tribunal.

(2) A party aggrieved by the decision of the Tribunal may within thirty days appeal to the High Court on matters of law.

34. The principal Act is amended by repealing section 75 and replacing it with the following new section – Replacement of section 75 of No. 12 of 1997.

Recovery of
Surcharge.

75.(1) Subject to section 74, an order made pursuant to section 73 for any moneys to be repaid or contributed to a co-operative

society shall be filed with the Tribunal and shall, without prejudice to any other mode of recovery, be a civil debt recoverable summarily.

(2) Without prejudice to the powers by the Committee of a society to take action for recovery of the sum surcharged under section 73, the Commissioner may, on behalf of the society, institute such action.

Amendment of
section 76 of
No.12 of 1997.

35. Section 76 of the principal Act is amended by deleting subsection (2) and substituting therefor a new subsection as follows-

(2) A dispute for the purpose of this section shall include –

- (a) a claim by a co-operative society for any debt or demand due to it from a member or past member, or from the nominee or personal representative of a deceased member, whether such debt or demand is admitted or not; or
- (b) a claim by a member, past member or the nominee or personal representative of a deceased member for any debt or demand due from a co-operative society, whether such debt or demand is admitted or not.

Replacement of
section 77 of No.
12 of 1997.

36. The principal Act is amended by repealing section 77 and replacing it with the following new section –

Establishment
of the Tribunal.

77.(1) There is hereby established a

tribunal to be known as the Co-operative Tribunal which shall consist of the following members –

- (a) a chairman and deputy chairman appointed by the Minister on the nomination of the Judicial Service Commission;
- (b) an advocate of the High Court of Kenya appointed by the Minister on the nomination of the Law Society of Kenya;
- (c) a lawyer with experience in co-operative law appointed by the Minister; and
- (d) three persons with at least ten years experience in the field of co-operative management and practice appointed by the Minister in consultation with the apex society.

(2) No person shall be qualified for appointment as chairman or deputy chairman of the Tribunal unless he holds, and has held for a total period of not less than five years, the qualifications specified in sections 12 and 13 of the Advocates Act.

(3) All appointments to the Tribunal shall be by notice in the Gazette issued by the Minister and shall be for a period of three years, provided that no one shall serve for more than two consecutive terms.

(4) The office of a member of the Tribunal shall become vacant –

- (a) if he accepts any office the holding of which, if he were not a member of the Tribunal, would make him ineligible for the appointment to office of a member of the Tribunal;
- (b) if he is removed from membership of the Tribunal by the Minister after due inquiry for failure to discharge the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misconduct; or

if he fails to attend three consecutive sittings of the Tribunal without reasonable cause.

Amendment of
section 79 of No.
12 of 1997.

37. Section 79 of the principal Act is amended by inserting the following new subsections immediately after subsection (2) –

(3) Where the Tribunal enters judgment in terms of the award together with costs, it shall issue a decree which shall be enforceable as a decree of a court.

(4) If, after making an order, the Tribunal discovers that the order was based on a misrepresentation or a concealment of a material fact by either party to the

dispute, the Tribunal may order the party guilty of the misrepresentation or concealment to pay the other party such sum as is, in the opinion of the Tribunal, sufficient compensation for any damage or loss suffered by the party as a result of the misrepresentation or concealment.

(5) The Tribunal shall have unlimited geographical and pecuniary jurisdiction in matters of co-operative disputes.

38. Section 80 of the principal Act is amended in subsection (4) by deleting the expression "all interlocutory applications which are not of such nature as to effect a decision in any matter which is in issue between parties" and substituting therefor the expression "temporary injunctions".

Amendment of section 80 of No. 12 of 1997.

39. Section 85 of the principal Act is amended –

Amendment of section 85 of No. 12 of 1997.

- (a) by renumbering the existing provision as subsection (1);
- (b) by inserting a new subsection immediately after subsection (1) as follows -

(2) No person shall be appointed under subsection (1) unless he holds the qualification specified under sections 12 and 13 of the Advocates Act.

40. The principal Act is amended by repealing section 89 and replacing it with the following new section –

Replacement of section 89 of No. 12 of 1997.

Remuneration of officers and members of society.

89. (1) No officer or member of a co-operative society shall receive any remuneration, salary, commission or any other

payment from the society for services rendered to the society unless the society has, by a resolution passed at a general meeting, approved the payment of such remuneration, salary, commission or other payment .

(2) No officer or member of a co-operative society shall receive any remuneration, salary, commission or other payment from any person or body or association other than the society in respect of any business or transaction entered into by the society:

Provided that in special circumstances the society may, by resolution passed at a general meeting, authorize such remuneration, salary, commission or other payment to be made.

(3) Any officer or member of a co-operative society who receives any remuneration, salary, commission or other payment in contravention of this section shall be guilty of an offence and liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years, or to both such fine and such imprisonment; and shall, if the offence is the contravention of subsection (1) of this section, be ordered to repay the amount of the remuneration, salary, commission or other payment received from the society in addition to or in lieu of any other punishment, and default in such payment shall be dealt with in the same manner as default in paying a fine imposed by a court.

41. Section 90 of the principal Act is amended in subsection (2) -

Amendment of section 90 of No. 12 of 1997.

- (a) by deleting the words “two thousand” and substituting therefor the words “fifty thousand”;
- (d) by deleting the words “two hundred” and substituting therefor the words “two thousand.

42. The principal Act is amended by inserting a new section immediately after section 90 as follows –

Insertion of section 90A of No. 12 of 1997.

Co-operative
Development
Fund.

90A. (1) The Minister may establish a fund to be known as the Co-operative Development Fund (hereinafter referred to as “the Fund”).

(2) The object and purpose for which the Fund is established is the promotion of education, training, research, consultancy and other related activities in the co-operative sector in Kenya.

(3) The Fund shall consist of contributions by co-operative societies and any other lawful source.

(4) The Fund shall vest in a Board of nine trustees, six of whom shall be elected by the co-operative movement and three appointed by the Minister.

(5) The Minister may, in consultation with the apex society, prescribe the manner of formation and maintenance of the Fund.

Amendment of section 91 of No. 12 of 1997.

43. Section 91 of the principal Act is amended in subsection (1) -

- (a) by inserting the words “in consultation with the apex society” immediately after the words “the Minister may”.
- (b) by deleting subsection (2) and substituting therefor the following new sub-section –
 - (2) In particular, and without prejudice to the **generality of the foregoing power, such rules may –**
 - (a) prescribe the forms to be used and conditions to be complied with in making application for the registration of a society and the procedure to be followed;
 - (b) prescribe the matter in respect of which a co-operative society may or shall make by-laws, and the procedure to be followed in making, varying and revoking by-laws, and the conditions to be satisfied before making, varying or revoking by-laws;
 - (c) prescribe the conditions to be complied with by persons applying for admission or admitted as members, and the payments to be made and the interest to be acquired before the exercise of the right of membership;
 - (d) regulate the manner in which funds may be

raised whether by means of shares or debentures or otherwise;

- (e) provide for general meetings of the members **and for the procedure at such meetings and the powers to be exercised by such meetings;**
- (f) provide for the appointment, suspension and removal of the members of the Committee and other officers, and for the procedure at meetings of the Committee, and for the powers to be exercised and the duties to be performed by the Committee and other officers;
- (g) prescribe the accounts and books to be kept by **a co-operative society;**
- (h) provide for the form of the final accounts and the balance sheet to be prepared annually and any other statements and schedules relating thereto;
- (i) provide for the resignation and expulsion of members and for the payments, if any, to be made to members who resign or are expelled, and for the liabilities of past members;
- (j) provide for the persons by whom and the form in which copies of entries in books of co-operative societies may be certified;
- (k) provide for the inspection of documents and registers at the Commissioner's office and prescribe the fees to be paid thereof and for the issue of copies of such documents or registers;

- (l) provide for the formation and maintenance of a register for members and, where the liability of members is limited by shares or limited by guarantee, of the register of shares;
- (m) provide for the order in which the value of a deceased member's interest shall be ascertained and subject to section 39 for the nomination of a person to whom such interest may be paid or transferred;
- (n) provide for the mode in which the value of the interest of a member who has become of unsound mind or incapable of managing his affairs shall be ascertained and for the nomination of any person to whom such interest may be paid or transferred;
- (o) provide for the manner of formation and maintenance of reserve funds and the objects to which such funds may be applied and for the investments of any funds under the control of a co-operative society;
- (p) prescribe the procedure to be followed in appeals made to the Minister under this Act;
- (q) prescribe the returns to be submitted by a co-operative society to the Commissioner and the person by whom and the form in which such returns shall be submitted;
- (r) prescribe the fees to be paid on applications, registrations and other acts done by the Commissioner under this Act;

- (s) prescribe the procedures to be followed in the liquidation of societies; and
- (t) prescribe anything which under this Act may be prescribed.

44. The principal Act is amended by inserting a new section immediately after section 91 as follows –

Insertion of section 91A of No. 12 of 1997.

Regulatory body for savings and credit co-operative societies.

91A.(1) The Minister shall in consultation with the apex society constitute by notice in the Gazette a body to regulate the operations of savings and credit co-operative societies.

(2) The composition of the body constituted under sub-section (1), its powers, duties and the terms of office of its members shall be as may be prescribed in the rules.

45. Section 92 of the principal Act is amended –

Amendment of section 92 of No. 12 of 1997.

- (a) in subsection (1) by deleting the expression “or all” wherever it occurs;
- (b) in subsection (2) by deleting the word “fourteen” and substituting therefor the word “thirty”.

46. The principal Act is amended by inserting a new section immediately after section 93 as follows –

Insertion of section 93A of No. 12 of 1997.

Other powers of the Commissioner.

93A. Without prejudice to any other powers under this Act the Commissioner may –

- (a) call for elections in any co-operative society;
- (b) attend meetings of a co-operative society and require every society to send to him at a proper time, notice and agenda of every meeting and all minutes and communications in respect thereof;
- (c) require that societies update their by-laws; and
- (d) exercise such other powers consistent with this Act as may be prescribed.

Amendment of
section 94 of No.
12 of 1997.

47. Section 94 of the principal Act is amended -

- (a) in subsection (2) by deleting the words “ten” and “one year” and substituting therefor the words “fifty” and “two years” respectively;
- (b) by inserting a new subsection immediately after subsection (2) as follows –

Cap.75.

(3) The Attorney-General may, pursuant to the provisions of the Criminal Procedure Code, appoint public prosecutors for cases arising under the provisions of this Act.

Consequential
amendments.

48.(1) The principal Act is amended in the provisions set out in the first column of the Schedule, in the manner respectively specified in the second column.

(2) A reference in any written law to the Registrar of Co-operative Societies shall, after the commencement of this section, be deemed to be a reference to the Commissioner for Co-operative Development.

SCHEDULE

(s.48)

| <i>Provision</i> | <i>Amendment</i> |
|--|--|
| s.4,6,7,8 | Delete the word "Registrar" wherever it appears and substitute therefor the word "Commissioner". |
| s.9 | Delete the expression "Registrar's" and substitute therefor the expression "Commissioner's". |
| s.10,11,23,26, 29, 30, 51, 52, 53, 54, 58, 59 60, 61, 65, 66, 67, 68, 69, 71, 78, 90. | Delete the word "Registrar" wherever it appears and substitute therefor the word "Commissioner". |
| 91(3) | Delete the word "Registrar" and substitute therefor the word "Commissioner". |